

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LOUIS WILBON,

Petitioner,

vs.

Case No. 07-12780
HON. AVERN COHN

KEN ROMANOWSKI,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND
DENYING PETITIONER'S MOTION FOR DECLARATORY JUDGMENT**

I.

This is a habeas case under 28 U.S.C. § 2254. Petitioner is a state prisoner proceeding pro se challenging his conviction of larceny by false pretenses, raising several claims. The matter has been referred to a magistrate judge for pretrial proceedings and before whom Petitioner filed a motion for declaratory judgment. The magistrate judge issued a report and recommendation (MJRR) that Petitioner's motion be denied. Before the Court are Petitioner's objections to the MJRR. For the reasons that follow, the MJRR will be adopted and Petitioner's motion will be denied.

II.

This is Petitioner's second motion for declaratory judgment. On January 25, 2008, Petitioner filed his first motion for declaratory judgment. The Court denied the motion because the relief sought - a declaration that his conviction is unconstitutional - would be determined within the confines of his habeas petition. Moreover, the Court

noted that Respondent has not yet filed the Rule 5 materials needed to resolve the petition. See Order filed February 1, 2008.

On September 26, 2008, Petitioner filed a second motion for declaratory judgment, again seeking a declaration that his conviction is unconstitutional as well as money damages. On April 23, 2009, the magistrate judge issued an MJRR recommending that the motion be denied because declaratory relief, in the form of injunctive relief and money damages, is not available in habeas proceedings and that Petitioner is limited to the relief provided under § 2254. The Court agrees. Petitioner's objections do not alter the Court's conclusion.

III.

Accordingly, the findings and conclusions of the magistrate judge are ADOPTED as the findings and conclusions of the Court. Petitioner's motion for declaratory judgment is DENIED.

SO ORDERED.

Dated: May 4, 2009

s/ Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to Louis Wilbon 162532, Mound Correctional Facility, 17601 Mound Road, Detroit, MI 48212 and the attorneys of record on this date, May 4, 2009, by electronic and/or ordinary mail.

s/ Julie Owens
Case Manager, (313) 234-5160